

## FACT SHEET

### Federally Funded Contracts Evaluating DBE Participation Contract Evaluation Branch

The California Department of Transportation (Caltrans), Office of Business and Economic Opportunity (OBEO), Contract Evaluation Branch (CEB), is responsible for evaluating all Caltrans federally funded contracts and counting Disadvantaged Business Enterprise (DBE) participation toward contract goals according to Federal regulation. The CEB determines whether the goal has been met or an adequate good faith effort (GFE) has been made by the bidder.

#### Bidder's Responsibility for Meeting DBE Requirements

Refer to the **Special Provisions** of the specific contract you are bidding on for your responsibilities. Contracts are advertised on the Division of Engineering Services, Office Engineer's (DES-OE) website at [http://dot.ca.gov/hq/esc/oe/weekly\\_ads/index.php](http://dot.ca.gov/hq/esc/oe/weekly_ads/index.php) and the Division of Procurement and Contracts' (DPAC) website at <http://caltrans-opac.ca.gov/contract.htm>.

#### Contract Evaluation Branch's Responsibility for Counting DBE Participation

Step 1	The DBE forms included with bidder's documents for bid are received from DES-OE or DPAC. The Caltrans Bidder-DBE Commitment, Confirmation forms, and a written confirmation (quote) from the DBE are reviewed to determine if the bidder met the goal. If not, GFE will be evaluated. See 49 CFR, Part 26, Appendix A, for GFE guidance. This determination is based only on information timely submitted with the bid or within four (4) business days.
Step 2	<p>Review the Caltrans <i>Bidder—DBE Commitment</i> and <i>DBE Confirmation</i> forms from the bidder to:</p> <ul style="list-style-type: none"> <li>• Ensure that the DBEs are certified by checking the California Unified Certification Program (CUCP) database and cross referencing the DBE work code(s) with the contract bid items. <i>(If the DBE is not certified, its participation will not be counted.)</i></li> <li>• Ensure the DBEs possess the correct work codes for the type of work they are listed to perform. DBE work codes are listed in the DBE's profiles on the CUCP database at <a href="http://www.dot.ca.gov/hq/bep/find_certified.htm">http://www.dot.ca.gov/hq/bep/find_certified.htm</a>.) <i>[If DBEs do not possess the correct work code(s), its participation will not be counted.]</i></li> <li>• Verify the dollar amount claimed for credit is accurate. <ul style="list-style-type: none"> <li>○ amount claimed for credit on a <i>DBE Confirmation</i> form is consistent with written confirmation (quote) from DBE* and the <i>DBE Confirmation</i> form.</li> <li>○ amount claimed for credit is consistent with the bidders bid and subcontractor's listing.</li> </ul> </li> </ul> <p>Written <i>DBE Confirmation</i> forms are reviewed to verify if the DBEs are committed to do the work on the Caltrans <i>Bidder—DBE Commitment</i> form.*</p> <p><b>*Important Note:</b> Rate sheets that are generic will not be accepted in lieu of written <i>DBE Confirmation</i> forms. This determination is based only on information timely submitted with the bid.</p>

Step 3	<p><b>Counting DBE Participation:</b> DBE participation is “counted” for all subcontractor tiers where it is demonstrated that certified DBEs possess the correct work codes and will be actively participating on the contract. For example, a non-DBE sub uses a DBE supplier, etc. CEB will count DBE participation as follows:</p> <ul style="list-style-type: none"> <li>• The entire amount of that portion of a construction contract that is performed by the DBE’s own forces is counted.</li> <li>• <u>Truckers:</u> <ul style="list-style-type: none"> <li>○ The method for counting trucking towards the DBE goal requires the following additional documentation—motor carrier permit, truck title, registration, and proof of insurance, trailer or tanker registration, bills of lading, sub-hauling agreements, existing commitments of trucking on other jobs, and subcontract specific information (e.g., type of material hauled, number of trucks/trailers/tankers, load capacity, distance traveled, and schedule), and a copy of a long-term lease. <b>The lease must be submitted with DBE documentation.</b> Truckers need to own at least one operable insured truck.</li> <li>○ DBE trucking firms receive 100 percent credit for the value of the hauling. DBE trucking firms who sublease to other DBE firms or DBE owner operators receive 100 percent of the value of the hauling.</li> <li>○ DBE trucking firms who sublease to non-DBE trucking firms or non-DBE owner operators receive credit for the transportation arrangement or broker fees <b><u>only</u></b>—typically from 5 to 20 percent of the value of the hauling.</li> <li>○ The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to receive credit for the total value of these hauling services. Leased trucks must be on a long-term lease agreement.</li> <li>○ DBE receives credit for the total value of the transportation services it provides on the contract using truckers it owns, insurers, and operates using drivers it employs.</li> <li>○ A <i>Truck Declaration</i> form must be completed for all truckers (will receive the form from the CEB).</li> </ul> </li> <li>• The cost of material or supplies are counted at 60 percent for regular dealers. Those claiming to be regular dealers of bulk items must additionally demonstrate that they own and operate appropriate distribution equipment.</li> <li>• Equipment rental only is also counted at 60 percent.</li> <li>• DBE participation will not be counted if the DBE is not certified at the time of bid and the certified DBE does not possess the correct work codes for work listed to perform.</li> </ul> <p><b>Important Note:</b> A <i>Truck Declaration</i> form must be completed for all truckers (truckers will receive the form from the CEB) and there may be times when further clarification of commitment is requested for other types of work.</p>
Step 4	<p>Determination is made regarding whether the DBE goal was met. If the DBE goal was not met, the GFE documentation will be evaluated.</p> <p><b>Important Note:</b> The steps above are not all inclusive. Other steps may be taken in the contract evaluation process.</p>
Step 5	<p>The evaluated DBE forms are returned to DES-OE or DPAC, whichever is applicable.</p>

## **FACT SHEET**

### **Federally Funded Contracts**

### **Monitoring DBE Participation**

### **During Construction**

#### **Role of the Division of Construction**

California Department of Transportation (Caltrans) resident engineers and inspectors monitor the contract work to ensure the DBEs listed on the approved Caltrans *Bidder—DBE Commitment* form perform the items of work specified at the time of bid opening and that no improper substitutions occur. Monitoring includes documenting the work DBEs perform by completing inspection reports. Resident engineers and inspectors ensure that all DBEs are performing a commercially useful function (CUF).

CUF is a matter of contract compliance that achieves two objectives: (1) ensures that dollars counted towards DBE goals are merited, and (2) ensures the Federal Government that funds entrusted to the State of California meet federal requirements.

Code of Federal Regulations 49, Part 26.55(c)(1)(2) states, “A DBE performs a commercially useful function when it is responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.”

To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating a price, determining quality and quantity, ordering the material, and installing where applicable and paying for the material itself.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

To ensure DBEs are performing a CUF, the resident engineer or inspector documents the DBE's work in inspection reports and reviews additional documentation that verifies the DBE's participation. Some examples of the types of documents are:

- certified payroll records
- paid supplier invoices
- monthly trucking verification reports
- supplier bills of lading or purchase requests
- leases

#### **Service and Architect and Engineering Contracts**

Monitoring DBE participation, including whether a DBE is performing a CUF, is subject to the same guidelines as stated above [49 CFR, Part 26.55(c)(1)(2)].

For further details, please refer to 49 CFR, Part 26.55.

## DEFINITIONS

(Partial List from 49 CFR, Part 26)

*Certified* means a business certified as a Disadvantaged Business Enterprise (DBE) by the California Unified Certification Program.

*DOT-assisted contract* means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

*Good Faith Efforts* means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Long-Term Lease* means an agreement not on an ad hoc or contract-by-contract basis.

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For additional details about the contracting process, refer to the Code of Federal Regulation 49, Part 26 at:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)